

INCENTIVES TO RETROFIT EXISTING DISTRIBUTIVE GENERATION AT MUNICIPAL WATER & WASTEWATER FACILITIES

TERMS AND CONDITIONS

May 25, 2001

TERMS AND CONDITIONS

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APPENDIX A: PAYMENT REQUEST FORM

TERMS AND CONDITIONS

1. AWARD CONTRACT

This project is being administrated by HDR Engineering, Inc. (ADMINISTRATOR) under contract to the California Energy Commission (COMMISSION). Funding for this project was authorized by Senate Bill No. 5X and consists of funds from the General Fund.

This Agreement is comprised of the Award Contract, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for Award Contracts. The ADMINISTRATOR may impose additional special conditions, which address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

The RECIPIENT shall sign all six copies of this agreement and return five signed packages to the ADMINISTRATOR'S Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the RECIPIENT. The RECIPIENT also must provide written documentation that a separate ledger account or fund has been established by the RECIPIENT for receipt and disbursement of Incentive funds.

Incentive-funded work cannot begin prior to the agreement term date. This agreement is not effective until it is signed by all parties.

2. ATTACHMENTS AND REFERENCES

The following are attached and hereby expressly incorporated into this agreement.

- Work Statement.
- Budget.
- Resolution of the RECIPIENT or Local Jurisdiction Governing Body (if applicable).

3. FUNDING LIMITATIONS

Any federal, state, and local laws and regulations applicable to your project not expressly listed in this agreement are incorporated herein as part of this agreement.

4. DUE DILIGENCE

The RECIPIENT is required to take timely actions which, taken collectively, move this project to completion. The ADMINISTRATOR will periodically evaluate the schedule for completion of Work Statement tasks. If the ADMINISTRATOR determines (1) the RECIPIENT is not being diligent in completing the tasks in the Work Statement or (2) the time remaining in the funding award is insufficient to complete all project work tasks

not later than the agreement term date, the ADMINISTRATOR may terminate this agreement.

5. PRODUCTS

Products are defined as any tangible item specified in the Work Statement. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the ADMINISTRATOR for review and comment. The RECIPIENT will submit an original and two copies of the final version of all products to the ADMINISTRATOR. If the ADMINISTRATOR determines a product is substandard, given the description and intended use of the product as described in the Work Statement and the Application, the ADMINISTRATOR may refuse to authorize payment for the product and any subsequent products that rely upon or are based upon that product under this agreement.

6. REPORTS

a. Progress Reports

The RECIPIENT shall submit monthly progress reports to the ADMINISTRATOR unless another schedule is indicated in the Special Conditions or Work Statement.

Unless otherwise indicated in the Work Statement or Special Conditions, each progress report should include a discussion of the status of each of the following:

Work Statement: This section should include a brief restatement of the approved tasks in the Work Statement and a report on the status of each. Included should be a discussion of any products due and whether or not the project is progressing according to schedule. This section also should include a discussion of any problems encountered, proposed changes to the tasks in the Work Statement, and anticipated accomplishments in the upcoming quarter.

Financial Status: This section should include a task-by-task narrative report comparing costs to date with the approved Budget. The report should state whether or not the project is progressing within the approved Budget, and discuss any proposed changes.

b. Final Reports

A draft final report shall be submitted to the ADMINISTRATOR no later than 14 days following completion of the project, unless another timeframe is indicated in the Special Conditions or Work Statement. Unless indicated otherwise in the Work Statement or Special Conditions, the report shall include:

- Owners name and Project Title

- A brief description of the project including the start date, completion date, budget, and actual project cost.
- Acknowledgement that the project is complete and operational in compliance with the Award Contract and all applicable codes and permits.
- Copies of all test, certifications, and permits.

The ADMINISTRATOR will review the draft report. The RECIPIENT will incorporate applicable comments and submit the final report (the original and two copies) to the ADMINISTRATOR.

Upon receipt of the final report, the ADMINISTRATOR shall ensure that all work has been satisfactorily completed.

c. **Rights in Reports**

The ADMINISTRATOR reserves the right to use and reproduce all reports and data produced and delivered pursuant to this agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the ADMINISTRATOR.

d. **Failure to Comply with Reporting Requirements**

Failure to comply with the reporting requirements contained in this award will be considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or of unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards.

7. AMENDMENTS

Changes to the Work Statement may be made under certain conditions. Such changes must not alter the original scope or purpose of the project or program as proposed in the RECIPIENT'S application. Such changes must not appreciably affect the value of the project or program. Work Statement changes require advance written approval of the ADMINISTRATOR. All requests must be submitted directly to the ADMINISTRATOR in writing and include a description of the proposed change, revised attachment(s), and the reasons for the change. If the change is approved, the affected sections of the agreement will be amended and signed by the ADMINISTRATOR, and the RECIPIENT'S authorized representative.

8. CONTRACTING AND PROCUREMENT PROCEDURES

This section provides general requirements for an agreement between the RECIPIENT and a third party ("subcontractor").

The RECIPIENT is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. RECIPIENT shall obtain price quotes from an adequate number of sources for all subcontracts.

The ADMINISTRATOR will defer to the RECIPIENT'S own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this agreement.

Upon request, the RECIPIENT must submit to the ADMINISTRATOR a copy of all solicitations for services or products required to carry out the terms of this agreement, copies of the proposals or bids received, and copies of subcontracts executed. If a specific subcontractor was identified in the RECIPIENT'S original application and the Application was evaluated based in part on this subcontractor's qualifications, then prior written approval from the ADMINISTRATOR is required before substituting a new subcontractor.

The RECIPIENT is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions which allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the RECIPIENT including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this agreement.
- The Standard of Performance provisions specified in this agreement.
- Audit provisions regarding record retention specified in this agreement.
- Language conforming to the "Indemnification" provision in this agreement.
- Language conforming to the "License" provision in this agreement.

Failure to comply with the above requirements may result in the termination of this agreement.

9. BONDING AND INSURANCE

The RECIPIENT will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations.

10. PERMITS AND CLEARANCE

The RECIPIENT is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies. Failure to obtain a permit from the local Air Quality Management District will result in forfeiture of funds.

11. EQUIPMENT

Title to equipment acquired by the RECIPIENT with incentive funds shall vest in the RECIPIENT. The RECIPIENT shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by incentive funds and shall not encumber the property without ADMINISTRATOR approval. When no longer needed for the original project or program, the RECIPIENT shall contact the ADMINISTRATOR for disposition instructions.

12. TERMINATION

This project may be terminated for any reason set forth below.

a. With Cause

In the event of any breach by the RECIPIENT of the conditions set forth in this agreement, the ADMINISTRATOR may, without prejudice to any of its legal remedies, terminate this agreement for cause upon five (5) days written notice to the RECIPIENT.

b. Without Cause

The ADMINISTRATOR may, at its option, terminate this agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the RECIPIENT by certified mail, return receipt requested. In such event, the RECIPIENT agrees to use all reasonable efforts to mitigate the RECIPIENT'S expenses and obligations hereunder. Also in such event, the ADMINISTRATOR shall pay the RECIPIENT for all expenses incurred prior to such notice of termination which could not by reasonable efforts of the RECIPIENT have been avoided, but not in excess of the maximum payable under this agreement.

13. TRAVEL AND PER DIEM

No travel and per diem expenses will be reimbursed. Travel and per diem expenses incurred during design and construction shall be the responsibility of the RECIPIENT as part of the projects cost.

14. LICENSE

The ADMINISTRATOR shall be granted a no-cost, nonexclusive, nontransferable, irrevocable worldwide license to use or have practiced for inventions developed hereunder and patents or patent applications derived from such inventions. RECIPIENT must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions.

The ADMINISTRATOR makes no claim to intellectual property that existed prior to this agreement and was developed without Incentive funding. If applicable, the RECIPIENT gives notice that the items listed in the Intellectual Property attachment or exhibit have been developed without ADMINISTRATOR funding and prior to the start of this agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this agreement, may be necessary if incentive funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.

The ADMINISTRATOR shall be granted the no-cost use of the technical data first produced or specifically used in the performance of this agreement.

The ADMINISTRATOR shall be granted a royalty-free nonexclusive, irrevocable, nontransferable license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this agreement.

15. STANDARD OF PERFORMANCE

RECIPIENT, its subcontractors and their employees, in the performance of RECIPIENT'S work under this award shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the RECIPIENT'S field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by ADMINISTRATOR, shall be borne in total by RECIPIENT. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by RECIPIENT and/or its subcontractors is deemed by the ADMINISTRATOR to have failed the foregoing standard of performance.

In the event RECIPIENT/subcontractor fails to perform in accordance with the above standard:

- (1) RECIPIENT/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the ADMINISTRATOR. Any

work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved.

RECIPIENT/subcontractor shall work any overtime required to meet the deadline for the task at no cost to the ADMINISTRATOR;

- (2) The ADMINISTRATOR shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and
- (3) The ADMINISTRATOR shall have the option to direct RECIPIENT/Subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the ADMINISTRATOR pursuant to application of (1) and (2) above. In the event the ADMINISTRATOR directs RECIPIENT/subcontractor not to re-perform a task, the ADMINISTRATOR and RECIPIENT shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the ADMINISTRATOR'S right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the ADMINISTRATOR may have under law.

16. PAYMENT OF FUNDS

a. Payment Requests

The RECIPIENT may request payment from the ADMINISTRATOR after successful completion of the project, submission of all reports, acquisition of all permits, and, at the discretion of the ADMINISTRATOR, field verification of the project's conformance to the Work Statement.

The ADMINISTRATOR may, at its own discretion, allow advanced disbursements of incentive funds if so requested by the RECIPIENT. Method of such disbursements shall be as described in the Special Conditions.

Funds in this award have a limited period in which they must be expended. All RECIPIENT expenditures must occur prior to the end of the term of this agreement.

b. Release of Funds

The ADMINISTRATOR will not process any payment request during the agreement term if the following conditions have not been met:

- All required reports have been submitted and are satisfactory to the ADMINISTRATOR.
- All applicable special conditions have been met.

- All appropriate permits or permit waivers from governmental agencies have been issued to the RECIPIENT and copies have been received by the ADMINISTRATOR.
- All products due have been submitted and are satisfactory to the ADMINISTRATOR.
- Other prepayment conditions as may be required by the ADMINISTRATOR have been met. Such conditions will be specified in writing ahead of time, if possible.

c. Retention

It is the ADMINISTRATOR'S policy to retain 10 percent of the total award at the end of the project for projects receiving advanced payments. After the project is complete the RECIPIENT must submit a completed payment request requesting release of the retention. The ADMINISTRATOR will review the project file and, when satisfied that the terms of the funding agreement have been fulfilled, will authorize release of the retention.

d. Administrator's financial manager

Disbursements are made by the ADMINISTRATOR'S financial manager.

17. FISCAL ACCOUNTING REQUIREMENTS

a. Accounting and Financial Methods

The RECIPIENT shall establish a separate ledger account or fund for receipt and disbursement of incentive funds for each project funded by this program. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The RECIPIENT shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the project has been formally concluded, or final payment received, whichever is later, unless otherwise specified in the funding agreement.

Records for nonexpendable personal property acquired with incentive funds shall be retained for three years after its final disposition.

c. Audits

Upon written request from the ADMINISTRATOR, the RECIPIENT shall provide detailed documentation of all expenses at any time throughout the project. In addition, the RECIPIENT agrees to allow the ADMINISTRATOR or any other agency of the state, upon written request, to have reasonable access to and the right of

inspection of all records that pertain to the project during the term of this agreement and for a period of three (3) years thereafter. Further, the RECIPIENT agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the state. RECIPIENT agrees to include a similar right to audit in any subcontract.

RECIPIENTS are strongly encouraged to conduct annual audits in accordance with the single audit concept. The RECIPIENT should provide two copies of the independent audit report and any resulting comments and correspondence to the ADMINISTRATOR within 30 days of the completion of such audits.

18. INDEMNIFICATION

The RECIPIENT agrees to indemnify, defend, and save harmless the state, ADMINISTRATOR and their officers, agents, and employees from any and all claims and losses accruing or resulting to RECIPIENT and to any and all contractors, subcontractors, manufacturers, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work, services, equipment, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the RECIPIENT in the performance of this agreement.

19. DISPUTES

In the event of a dispute or grievance between RECIPIENT and the ADMINISTRATOR regarding this agreement, the following two-step procedure shall be followed by both parties. RECIPIENT shall continue with responsibilities under this agreement during any dispute.

a. Dispute Resolution

The RECIPIENT shall first discuss the problem informally with the ADMINISTRATOR. If the problem cannot be resolved at this stage, the RECIPIENT must direct the grievance together with any evidence, in writing, to the ADMINISTRATOR. The grievance must state the issues in the dispute, the legal authority or other basis for the RECIPIENT'S position and the remedy sought. The ADMINISTRATOR must make a determination on the problem within ten (10) working days after receipt of the written communication from the RECIPIENT. The ADMINISTRATOR shall respond in writing to the RECIPIENT, indicating a decision supported by reasons. Should the RECIPIENT disagree with the ADMINISTRATOR'S decision, the RECIPIENT may appeal to the second level.

The RECIPIENT must prepare a letter indicating why the ADMINISTRATOR decision is unacceptable, attaching to it the RECIPIENT'S original statement of the

dispute with supporting documents, along with a copy of the ADMINISTRATOR'S response. This letter shall be sent to the ADMINISTRATOR within ten (10) working days from receipt of the ADMINISTRATOR'S decision. The ADMINISTRATOR'S Senior Vice President or designee shall meet with the RECIPIENT to review the issues raised. A written decision signed by the Senior Vice President or designee shall be returned to the RECIPIENT within twenty (20) working days of receipt of the RECIPIENT'S letter.

b. Binding Arbitration

Should the ADMINISTRATOR'S procedure described above fail to resolve a dispute or grievance to the satisfaction of the RECIPIENT, the RECIPIENT may elect to have the dispute or grievance resolved through binding arbitration. The ADMINISTRATOR may also elect to have any dispute or grievance resolved through binding arbitration. Both parties must consent before submitting the dispute to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. The decision rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The demand for arbitration shall be made no later than six (6) months after the date of the termination of this agreement, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- (1) The AAA's administrative fees shall be borne equally by the parties;
- (2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- (3) Witness expenses for either side shall be paid by the party producing the witness;
- (4) Each party shall bear the cost of its own travel expenses;
- (5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of agreement funds. Both parties must agree, in writing, to utilize agreement funds to pay for arbitration costs.

20. WORKERS' COMPENSATION INSURANCE

RECIPIENT hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this agreement, and agrees to furnish to the ADMINISTRATOR satisfactory evidence of this insurance at any time the ADMINISTRATOR may request.

If RECIPIENT is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the ADMINISTRATOR satisfactory evidence of this insurance at any time the ADMINISTRATOR may request.

21. GENERAL PROVISIONS

a. Governing Law

It is hereby understood and agreed that this agreement shall be governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

The RECIPIENT, and the agents and employees of the RECIPIENT, in the performance of this agreement, shall act in an independent capacity and not as officers or employees of the ADMINISTRATOR.

c. Assignment

Without the written consent of the ADMINISTRATOR in the form of a formal written amendment, this agreement is not assignable or transferable by RECIPIENT either in whole or in part.

d. Timeliness

Time is of the essence in this agreement.

e. Unenforceable Provision

In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be affected thereby.

f. Waiver

No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The ADMINISTRATOR reserves the right to seek further written assurances from the RECIPIENT and its team that the work of the project under this agreement will be performed consistent with the terms of the agreement.

h. Change in Business

- (1) RECIPIENT shall promptly notify the Commission of the occurrence of each of the following:
 - (a) A change of address.
 - (b) A change in the business name or ownership.
 - (c) The existence of any litigation or other legal proceeding affecting the project.
 - (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
 - (e) Receipt of notice of any claim or potential claim against RECIPIENT for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the ADMINISTRATOR'S rights.
- (2) RECIPIENT shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the ADMINISTRATOR. A change of business entity or name change requires an amendment assigning or novating the agreement to the changed entity. In the event the ADMINISTRATOR is not satisfied that the new entity can perform as the original RECIPIENT, the ADMINISTRATOR may terminate this agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this agreement for any reason. The provisions include, but are not limited to:

- "Payments of Funds"
- "Equipment"
- "Change in Business"
- "Disputes"

- “Termination”
- “Audit”
- “Indemnification”
- “License”
- “Fiscal Accounting Requirements”

22. CERTIFICATIONS & COMPLIANCE

a. Federal, State & Local Laws

RECIPIENT shall comply with all applicable federal, state and local laws, rules and regulations.

b. Nondiscrimination Statement of Compliance

During the performance of this agreement, RECIPIENT and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. RECIPIENT and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. RECIPIENT and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part of it as if set forth in full. RECIPIENT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The RECIPIENT shall include the nondiscrimination and compliance provisions of this article in all subcontracts to perform work under this agreement.

c. Drug Free Workplace Certification

By signing this agreement, the RECIPIENT hereby certifies under penalty of perjury under the laws of the State of California that the RECIPIENT will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- i) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).

- ii) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- iii) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the agreement or termination of the agreement or both, and the RECIPIENT may be ineligible for any future state awards if the ADMINISTRATOR determines that any of the following has occurred: (1) the RECIPIENT has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. National Labor Relations Board Certification (Not applicable to public entities)

RECIPIENT, by signing this agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the RECIPIENT within the immediately preceding two year period because of the RECIPIENT'S failure to comply with an order of a Federal Court which orders the RECIPIENT to comply with an order of the National Labor Relations Board.

e. Recycling Certification

The RECIPIENT shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. RECIPIENT may certify that the product contains zero recycled content.

f. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of \$100,000, the RECIPIENT acknowledges that:

- i) It recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- ii) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

g. Priority Hiring (Applicable to California Employers)

For any agreement in excess of \$200,000, RECIPIENT shall give priority consideration in filling vacancies in positions funded by this agreement to those qualified to receive aid under Chapter 2, commencing with section 11200 of the Welfare and Institutions code, in accordance with Article 3.9, commencing with Section 11349 of the Welfare and Institutions Code.

h. Air or Water Pollution Violation

Under the state laws, the RECIPIENT shall not be:

- (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

i. Americans With Disabilities Act

By signing this agreement, RECIPIENT assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

j. Union Activity

By signing this agreement, the RECIPIENT hereby certifies that RECIPIENT will not use incentive funds for any expenses to assist, promote, or deter union organizing. Any RECIPIENT that makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that state funds have not been used for those expenditures. (Government Code Section 16645.2)

23. ADDITIONAL REQUIREMENTS

a. Project Delay Notification

The RECIPIENT is required to notify the ADMINISTRATOR if circumstances occur which will delay the project so that project work tasks cannot be completed within the timeframes specified in the Work Statement. The RECIPIENT is required to notify the ADMINISTRATOR in writing within 5 working days of the occurrence of the delay.

b. Project Extensions

If a project or portion of a project is not operational by the applied completion date, due to extenuating circumstances outside the control of RECIPIENT, the RECIPIENT may make a written request to extend the date of installation and/or operation.

The ADMINISTRATOR may extend the date of installation and/or operation at its discretion. If an extension is granted, the amount of the award may be reduced at the ADMINISTRATOR'S discretion to the amount that would otherwise be awarded for projects meeting the extended date.

An extension will be considered only if it meets all of the following criteria and procedures:

- A written request for an extension is received before the original completion date as specified in the Work Statement.
- The RECIPIENT must document circumstances beyond its control which prevent the project from being operational by their applied completion date.
- The RECIPIENT must show it neither knew nor had reason to know of the circumstances that led to the project delay.
- The RECIPIENT must show it has taken all possible actions to mitigate the project delay.
- The RECIPIENT must show satisfactory proof that there are no other known obstacles in the way of completing the project.
- The RECIPIENT must show it has incurred a legal obligation such as a contract or purchase order in an effort to complete the project as originally planned.
- The requested extension would otherwise comport with all of the eligibility requirements of the Overall Program Guidelines, applicable Program Element Guidelines, and solicitation document, if any.

c. Program Evaluation, Project Monitoring, and Verification

The ADMINISTRATOR will at its discretion audit a sample of funding RECIPIENT'S to verify compliance with their Award Contract.

d. Random Audits, Record Retention and Access to Facilities

Upon written request from the ADMINISTRATOR, the RECIPIENT shall provide detailed documentation of all expenses, allow the ADMINISTRATOR or its agent access to facilities and records, and allow the ADMINISTRATOR or its agent to collect data needed to measure and verify project completion in compliance with the Award Contract. (this may include but is not limited to utility bills, metering data, facility equipment surveys, and information on operational practices. If requested, the RECIPIENT must agree to provide to the ADMINISTRATOR or its agent associated data from a period prior to the start of the project as necessary to establish baselines from which improvements through retrofits may be measured. In addition, the RECIPIENT must agree to allow the ADMINISTRATOR or any other agency of the state, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project and to the RECIPIENTS' energy use during the term of the agreement and for a period of three years thereafter. Further, the RECIPIENT must agree to incorporate an audit of this project within any scheduled audits, when specifically requested by the ADMINISTRATOR. RECIPIENT must agree to include a similar right to audit in any subcontract or subgrant. The RECIPIENT shall retain all project records (including permits, financial records, progress reports, payment requests, and documentation substantiating the annual hours of operation) for a minimum of three years after the project has been formally concluded, or final payment received, whichever is later, unless otherwise specified in the funding award agreement.

e. Notification of Nonoperation

RECIPIENT shall notify ADMINISTRATOR in writing immediately if RECIPIENT has reason to believe that the project may become nonoperational in the future.

f. Enforcement Action

1) Recovery of Overpayment

The ADMINISTRATOR may commence formal legal action against any RECIPIENT or former RECIPIENT to recover any portion of a funding award the ADMINISTRATOR determines the RECIPIENT or former RECIPIENT was not otherwise entitled to receive.

2) Fraud and Misrepresentation

The ADMINISTRATOR may initiate an investigation of any RECIPIENT which the ADMINISTRATOR has reason to believe may have misstated, falsified, or misrepresented information in applying for a funding award, invoicing for a funding award payment, or in reporting any information as required by the overall program guidelines or applicable program element guidelines. Based on the results of the investigation, the ADMINISTRATOR may take any action it deems appropriate,

including, but not limited to, cancellation of the funding award, recovery of any overpayment, and initiation of an Attorney General investigation and prosecution pursuant to Government Code sections 12650, et seq., or other provisions of law.

g. Agreement and Operation Terms

This agreement has two terms: agreement term and operation term. Agreement term is the period in which all Incentive funded tasks must be completed and funds requested. Operation term is the 3 year period that the project must reduce peak electricity demand during on-peak summer hours and Stage 3 Alerts.

EXHIBIT A

PAYMENT REQUEST FORM

(Rev. 1.01)

Payment Request No.:

RECIPIENT CERTIFICATION		ADMINISTRATOR USE ONLY (-NS-)	
I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding agreement. No incentive funds will be used to assist, promote, or deter union organizing.		Amount Authorized \$ _____	
Signature of Authorized Certifying Officer	Date	Retention Yes_____ No _____	
Type or Print Name and Title	Phone	Fiscal Year	
ADMINISTRATOR APPROVALS			
Project Manager	Date	ACCOUNTING OFFICE USE ONLY	
Financial Manager	Date	Retention	
Office Manager	Date	Amount Scheduled	

INSTRUCTIONS

Payment Request No.: Begin with the number 1 on your first payment request and consecutively number each subsequent payment request. The last payment request should include the notation, “Final.”

Recipient (Name and Complete Address): Same as “RECIPIENT” on the Award Contract. Address should include the city, state, and zip code.

Type of Request: Indicate if this is a request for “Disbursement of Award” or “Release of Retention”.

Amount of this Request: Indicate the amount currently being requested.

Award No.: Same as “Award Number” on the Award Contract.

Approved Project Term: This is the entire project period beginning with the date the project starts through the end date. This date should match the “Term” on the Award Contract unless you have received a term extension.

Total Funds Requested to Date: Show the total of all funds requested from the administrator prior to this request.

Funds Received to Date: Show the total amount of funds received from the Energy Commission prior to this request. “Funds Requested to Date” minus any retention withheld equals “Funds Received to date”.

Line Items: Fill in the line items as they appear in the Budget.

- **Budget:** Show by line item the budget as shown in the award contract.
- **Expenses this Period:** Show by line item the actual payments made by the RECIPIENT during the period covered by this report.
- **Expenses to Date:** Show by line item the cumulative total of all expenses from the beginning of the project through and including the period covered by this report.
- **Obligations Not Yet Paid:** Show by line item all funds obligated on purchase orders, contracts, etc. for which you have received an invoice but have not yet paid.
- **Remaining Balance:** Show by line item the funds available for expenses or obligations. “Budget” minus “Expenses to Date” minus “Obligations Not Yet Paid” equals “Remaining Balance.”

Certification: Name, title and signature of authorized certifying official (usually the Recipient’s project manager).

Submit original and one copy to:

HDR Engineering, Inc.
SB5x ADMINISTRATOR
271 Turn Pike Dr.
Folsom, CA 95630